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RHEHAAA/NATIONAL SECURITY COUNCIL WASHINGTON DC PRIORITY
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S E C R E T KABUL 000806

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STATE FOR P, SCA/FO (DAS GASTRIGHT), SCA/A (SINGRAM), S/WCI
(MSTAMILLO), L/PM (EPELOFSKY)
NSC FOR AHARRIMAN
OSD FOR ARICCI
CENTCOM FOR CFC-A, CG CJTF-76, POLAD, CSTC-A

E.O. 12958: DECL: 03/08/2017
TAGS: [KAWC](#) [MARR](#) [PTER](#) [PGOV](#) [PINS](#) [PREL](#) [AF](#)
SUBJECT: DETAINEE LEGAL FRAMEWORK: GOA PART TWO RESPONSE
STILL PENDING

REF: A. KABUL 652
[B. KABUL 558](#)
[C. KABUL 369](#)

Classified By: Political-Military Affairs Counselor Carol A. Rodley; re
asons 1.4(b) and (d).

[1](#)1. (S) This is an action request. See paragraph 5.

[1](#)2. (S) Expecting to receive the remainder of the GOA response on the detainee legal framework that will apply to detainees transferred from the Bagram Theater Internment Facility (BTIF) to Afghan custody at the Afghan National Detention Facility (ANDF), polmiloff met on March 8 with Malik Quraishi, Director of Policy and Oversight in Afghanistan's Office of the National Security Council (ONSC). The response is not yet ready. The ONSC has invited Supreme Court participation on the Review Board, but the Chief Justice, Attorney General, Ministry of Justice, Ministry of Interior, National Directorate of Security (NDS), and Ministry of Defense (MOD) have not yet designated their Review Board representatives. Although the ONSC has prodded, Sayed Zahor Rasoli, Senior NDS Legal Advisor, has not yet provided the written assessment of which laws apply specifically to each of the six test cases (reftel C). Deputy National Security Adviser Engineer Ibrahim is prepared to certify these documents and the Part One response contained in ref A as a collective GOA response on the detainee legal framework. Bad weather delayed the return of key players to Kabul last week and pushed the o/a February 28 date cited in reftel A forward to March 8. Quraishi now estimates that a response can be compiled o/a March 13.

[1](#)3. (S) Now that the ANDF is completed and its guard force in place, polmiloff again stressed the urgency of receiving the complete GOA legal framework response. Quraishi stressed that ONSC believes the Review Board must meet before physical transfers begin. He believes the board can be convened very soon after representatives are designated and that it should be possible for GOA to be in a position to accept transfers in "about two weeks." He asked that evidentiary files be translated and transferred 30 days before detainees are physically transferred. These cases have been previously assessed by an interagency team of GOA prosecutors who have reviewed over 500 cases at the BTIF, but it is not clear if

these prosecutors will sit on the review board or later handle the cases.

¶4. (S) In response to detailed questioning on whether the test case response from Rasoli will cite NDS law or any other basis for indefinite detention, Quraishi recapped GOA discussions in which the signatories to the Part One response (reftel A) acknowledged that detainees could be held indefinitely in "exceptional" circumstances. He also said that signatories were reluctant to put this in writing. Quraishi made clear that GOA would indeed be willing to detain some detainees indefinitely, at one point saying "it's no big deal." Polmiloff stressed the need to document understandings in writing, and Quraishi promised to ask Engineer Ibrahim if this GOA position could indeed be included in the upcoming written response. Polmiloff also asked Quraishi about Supreme Court Chief Justice Azimi's privately expressed opinion that the 30-day period of pretrial detention would start only after MOD transfers jurisdiction to the prosecuting ministry. Quraishi emphasized this opinion was not shared by the other signatories to the reftel A response.

¶5. (S) On February 16, the Deputy Secretary of Defense approved the initial transfer of 14 detainees, and post has been advised that the initial transfer is planned for March ¶13. The transfer date has been discussed only in Secret/NoFORN channels and to our knowledge has never been

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shared with GOA officials. On March 6, Polmilcouns recommended to CSTC-A MG Durbin that the formal public opening of the ANDF be delayed until we received the complete GOA legal framework response, the Review Board has convened, evidence has translated, and approved press guidance put in place.

--Action Request #1: We request instruction to give the GOA a firm date for the first transfer and recommend it occur o/a March 25. We believe allowing a further two weeks will allow the GOA to receive the first transfer in an orderly manner after establishing the procedures outlined in reftel B.

--Action Request #2: Post also requests a response to the ambassador's recommendation in reftel B and clarification of whether or not the Department believes no detainees should be transferred if all detainees cannot be transferred.

--Action Request #3: Request coordinated State/DOD public affairs guidance on the planned detainee transfer as soon as possible.

NORLAND